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Equal Employment Opportunity Commission v. Outrigger Restaurant, Inc., and Employer Accounting Services Com. Inc. as successor to SkilStaf, Inc.

Judge Charles R. Butler Jr.

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Equal Employment Opportunity Commission v. Outrigger Restaurant, Inc., and Employer Accounting Services Com. Inc. as successor to SkilStaf, Inc.

Keywords

EEOC, Outrigger Restaurant Inc., Employer Accounting Services Com. Inc., SkilStaf Inc., 97-1189-SB-M, Consent Decree, Disparate Treatment, Retaliation, Constructive Discharge, Hostile Work Environment, Race, Black, Service, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Plaintiff,

JoAnn Sullivan, Wallace Kyles,
et.al.

Plaintiff-Intervenors

vs.

Outrigger Restaurant, Inc.,
and Employer Accounting
Services Com. Inc. as
successor to SkilStaf, Inc.

Defendants.

U.S. DISTRICT COURT
S.D. DIST. AL.
MOBILE, AL 36602
1997 SEP -9 P 1:50
FILED
CLERK'S OFFICE

Civil Action No. 97-1189-GB-M

CONSENT DECREE

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., guarantees workers that they will be free from employment discrimination on the basis of race.

On December 29, 1997, the Equal Employment Opportunity Commission ("EEOC") filed suit in this court against The Outrigger Restaurant, L.L.C. (Outrigger) and

Employer Accounting Services, as successor to SkilStaf, Inc. (SkilStaf). The EEOC's complaint alleged that Outrigger and SkilStaf had discriminated against Gregory King, Earlene Millender, JoAnn Sullivan, Deloise Porter, Michael Watson, Wallace Kyles, Tyrone Pearson, Henry Sullivan, Michael Jackson, Louis Etheridge and a class of similarly situated individuals by subjecting them to a racially hostile environment, retaliation, a segregated workplace and constructive discharge. The complaint also alleged that the Defendant employers failed to maintain records as specified in Title VII regulations, 29 C.F.R. § 1602, in violation of § 709(c) of Title VII.

The Outrigger and SkilStaf both denied in substance that they discriminated against Gregory King, Earlene Millender, JoAnn Sullivan, Deloise Porter, Michael Watson, Wallace Kyles, Tyrone Pearson, Henry Sullivan, Michael Jackson, Louis Etheridge and a class of similarly situated individuals.

On or About April 29, 1998 Gregory King, Earlene Millender, JoAnn Sullivan, Deloise Porter, Michael Watson, Wallace Kyles, Tyrone Pearson, Henry Sullivan, Michael Jackson, Louis Etheridge, Ahmad Rasheed, Barbara Clarkson, Cassandra Knight, Dawn Whiting and Mark A. Vannasdall (hereinafter the Plaintiff-Intervenors) filed a Complaint in Intervention alleging that they were discriminated against on the basis of race by being subjected to a racially hostile environment, retaliation, a segregated workplace and constructive discharge in violation of Title VII of the Civil Rights Act of 1964, as amended and 42 U.S.C. Section 1981. Louis Etheridge, Michael Watson and Ahmad Rasheed are not represented by the Plaintiff-Intervenors' counsel. On or about March 24, 1999, the Plaintiff, EEOC identified Julie Tipton as an aggrieved individual similarly situated to the Charging Parties.

On or about September 24, 1998, Defendant SkilStaf filed a Motion for Leave to File a Cross Claim against Defendant Outrigger. The Motion was granted.

On December 7, 1998 Defendant SkilStaf filed a Motion for Leave to File a Second Amended Cross Claim Against Defendant Outrigger Restaurant, L.L.C. and Third Party Claim Against Marvin Ratcliff. On or about December 8, 1998 the Motion was granted.

I. GENERAL PROVISIONS

The Plaintiff, Plaintiff-Intervenors and Defendants are desirous of settling this action by Consent Decree and agree to the jurisdiction of this court concerning all issues involving the violations alleged in the several complaints

This Decree, being entered with the consent of the EEOC, the Plaintiff-Intervenors, Outrigger and SkilStaf shall not constitute an adjudication or finding on the merits of the case, and shall in no manner be construed as an admission by Outrigger or SkilStaf of any violation of the Title VII of the Civil Rights Act of 1964, as amended, or other applicable federal law.

This Decree is binding upon the EEOC, the Plaintiff-Intervenors, Outrigger and SkilStaf as to the issues resolved, as well as upon their successors and assigns and persons in privity. The issues resolved by this Decree are those which were alleged in the Charges of Discrimination numbered 130-96-0840, 130-96-0841, 130-96-0842, 1130-96-0853, 130-96-0854, 130-96-0855, 130-96-0918, 130-96-0951, 130-96-0954 and 130-96-1081 and asserted in the Complaint and/or Complaint in Intervention in the above styled lawsuit.

The Court being fully advised of the premises doth Order, Adjudge and Decree as follows:

II. SPECIFIC PROVISIONS

A. This Court has full jurisdiction to decide this controversy as to the EEOC the Plaintiff-Intervenors, Outrigger and SkilStaf. This Court will retain jurisdiction for the next two (2) years so that any dispute arising out of the administration of this Decree can be adjudicated.

B. Outrigger will immediately post the Notice attached hereto as Exhibit "A" in a prominent and conspicuous place, visible to all employees. Outrigger will post the notice at Outrigger's Orange Beach, Alabama facility for a period of two years after the entry of this Decree.

C. SkilStaf will pay the Plaintiff-Intervenors and other identified aggrieved individuals a total of \$150,000.00 as monetary settlement of this lawsuit and any claims arising out of EEOC Charge numbers 130-96-0840, 130-96-0841, 130-96-0842, 1130-96-0853, 130-96-0854, 130-96-0855, 130-96-0918, 130-96-0951, 130-96-0954 and 130-96-1081 (hereinafter the underlying Charges). The amount of each check(s) shall be made payable as directed by counsel for the EEOC for Plaintiff-Intervenors Michael Watson and Louis Eteridge and for identified aggrieved individual Julie Tipton. The check(s) for the remaining Plaintiff-Intervenors, other than Ahmad Rasheed, shall be made payable as directed by counsel for the same. The checks to the Plaintiff-Intervenors and Julie Tipton will be mailed within 15 days of approval by the Bankruptcy Court (see below) and entry of the Consent Decree by the District Court (whichever comes last). A copy of the check(s) and the certified mail receipt evidencing payment will be mailed to Pamela K. Agee, Senior

Trial Attorney, EEOC, Birmingham District Office, 1900 Third Avenue, North, Birmingham, Alabama 35203. As a condition for receiving the monetary relief provided for herein, each Charging Party, Plaintiff-Intervenor and/or aggrieved individual shall sign a Release as to any and all claims arising out of the underlying Charges and this lawsuit.

D. The EEOC has agreed that the amount payable to Ahmad Rasheed is sufficient monetary compensation based on the circumstances of the case. Within fourteen days after the entry of this Decree, the EEOC will send a Release to Ahmad Rasheed explaining that he has fourteen days from the receipt of the Release to sign and return the Release to the EEOC if he chooses to accept the amount indicated on said Release. If Ahmad Rasheed disagrees with the Commission's assessment of his case and does not sign the Release within fourteen days of his receipt of that Release, then the EEOC will issue Ahmad Rasheed a Notice of Right to Sue. If Ahmad Rasheed fails to sign the Release, then his claims in this lawsuit shall not be affected by this Consent Decree and he may pursue any claims that he may have on his own. Additionally, if Ahmad Rasheed fails to accept the terms of this Consent Decree, his share of the settlement shall revert back to SkilStaf.

E. The Defendants shall not retaliate in any manner against the Plaintiff-Intervenors or any person who participated in this lawsuit or in the investigation of the Charges underlying this lawsuit.

F. Neither Outrigger nor SkilStaf will use race as a factor when filling any position. Outrigger specifically will not use race as a factor when filling waiter, waitress, host, hostess and/or bartender positions.

G. During the period from September 1, 1999 through October 31, 1999 and May 1, 2000 and October 31, 2000 Outrigger will supply bi-monthly reports to the EEOC detailing the individuals hired during the previous two month period and stating the race and position of each individual. Outrigger will retain its applications for all waiter, waitress, host, hostess and bartender positions and the applications of those who expressed no preference in any particular job position at its Orange Beach location during the course of this Decree. Outrigger agrees to allow the EEOC to inspect these applications at a reasonable time in order to monitor compliance with the Decree.

H. Within three months of the signing of this Decree, and at least once a year thereafter for at least two years, Outrigger will provide training to its management employees on Federal Employment Laws, including racial harassment, retaliation and segregated workforce in the form of at least one four-hour seminar by instructors of each of its choice who are competent to do so. The employees who attend the training sessions will be required to sign an attendance roster. Outrigger agrees that copies of said roster and an outline or program of the training course shall be mailed to Pamela K. Agee, Senior Trial Attorney at 1900 3rd Avenue, North, Birmingham, AL 35203 within one month of the day of the training.

I. SkilStaf will continue to provide training to its management employees on an annual basis on Federal Employment Laws, including racial harassment, retaliation and segregated workforce, in the form of at least one four-hour seminar by instructors of its choice who are competent to do so. The employees who attend the training sessions will be required to sign an attendance roster. SkilStaf agrees that copies of said roster and an

outline or program of the training course shall be mailed to Pamela K. Agee, Senior Trial Attorney at 1900 3rd Avenue, North, Birmingham, AL 35203 within one month of the training.

J. Outrigger will develop a harassment policy and complaint procedure, to be reviewed by the Equal Employment Opportunity Commission within sixty days of the entry of this Decree. A copy of that policy and procedure will be given to each present employee and to each new employee upon hiring. Additionally, the procedure will be verbally explained to all present employees within ninety days of the entry of this Decree and to all new employees upon hiring.

K. SkilStaf will continue the implementation of its harassment policy and complaint procedure for use with all its direct employees, both present and new hires. Additionally, the procedure will be verbally explained to all present employees within ninety days of entry of this Decree and will be verbally explained to new employees upon hiring.

L. Outrigger has asserted that it is its policy to provide in response to a reference request, only the dates of employment and the job that the employee held. However, Outrigger shall provide the identified aggrieved individuals in this lawsuit with a reference upon any future employers' or entities' request, by sending a letter as outlined in Exhibit B to this Decree. Outrigger must respond to all requests for reference and inquiries concerning the aggrieved individuals solely by providing a copy of Exhibit B. This provision survives the expiration of this Decree.

M. The EEOC agrees that it will not bring any further action against Outrigger or SkilStaf for any class allegations which are the subject of the present complaint which occurred prior to July 20, 1998, except the EEOC shall not be prohibited by this provision

from proceeding against Outrigger and/or SkilStaf for non-compliance with any provision of this Decree. In addition, the EEOC acknowledges that as of August 18, 199, there were no pending charges against Outrigger and/or SkilStaf involving the issues in the case at bar (other than the ten charges that are the subject of the instant lawsuit). The parties acknowledge that there are three pending Charges against SkilStaf, charge numbers 130-98-0222, 130-98-1493 and 130-98-1467 as of the date of this Consent Decree. Those charges do not concern the specific issues in the present case and this Decree does not preclude those individuals or the EEOC from taking any action on those charges. Furthermore, this Decree shall not preclude an individual, except any of the Plaintiff-Intervenors, from asserting any individual claims against Outrigger and/or SkilStaf concerning issues settled by this Decree.

N. Outrigger will take steps to encourage African-American applicants to apply for its waiter, waitress, host, hostess and bartender positions as follows:

- 1) By notifying the following organizations in and around the Orange Beach, Gulf Shores, Pensacola, Foley areas:

National Association for the Advancement of Colored People

Urban League,

Outrigger will write to the organizations to: 1) apprise the Organizations that Outrigger desires to recruit and hire African-American waiters, waitresses, hosts, hostesses and bartenders. 2) encourage the organization to refer Blacks who are interested in such a position.

After the initial contact, Outrigger will contact these organizations at least once a year reminding these organizations of Outrigger's desire to recruit African-American applicants for the next 3 years.

- 2) By running newspaper advertisements for waiters, waitresses, hosts, hostesses and bartenders. which state that Outrigger is "An Equal Employment Opportunity Employer, and welcomes men and women of all races, colors, national origins, ages and religions to apply".

O. Each of the Plaintiff-Intervenors agrees that he/she will not bring any further action against Outrigger or SkilStaf for any allegations which are the subject of the present Complaint in Intervention which occurred prior to July 20, 1998, except the Plaintiff Intervenors shall not be prohibited by this provision from proceeding against Outrigger and/or SkilStaf for non-compliance with any provision of this Decree.

P. This Consent Decree shall not be deemed a waiver or release of any claims of SkilStaf, Inc. against Outrigger or Marvin Ratcliff, and SkilStaf expressly reserves all such claims against Outrigger and Marvin Ratcliff.


Q. Outrigger's Agreement to this Consent Decree will be made pursuant to its Corporate requirements and or by-laws.

R. The EEOC is not seeking attorney's fees or costs against Outrigger and/or SkilStaf. Neither Outrigger nor SkilStaf will seek attorney fees or costs against the EEOC or the Plaintiff-Intervenors.

This Consent Decree is conditional upon receiving the approval of the payment by SkilStaf of the amount of \$150,000.00 by the Bankruptcy Court in the Southern District of Alabama overseeing Outrigger's Chapter 11 Debtor-in-Possession Petition.

If the terms and conditions of this Decree are violated or breached, the parties may petition the Court for further Orders, adjudication and relief in this matter.

SIGNED and ORDERED this 7th day of September, 1999.



UNITED STATES DISTRICT JUDGE
CHARLES R. BUTLER, JR.

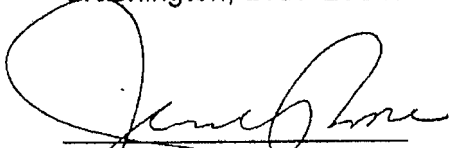
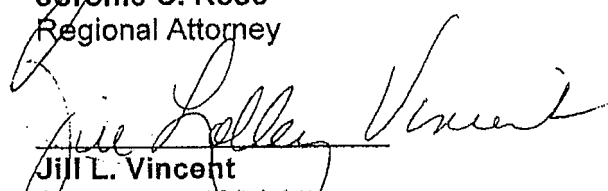
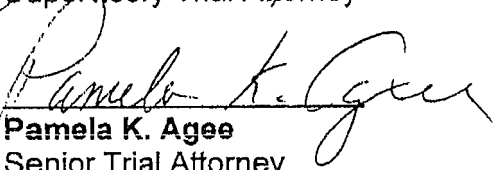
By Consent:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

C. Gregory Stewart
General Counsel


Gwendolyn Young Reams
Associate General Counsel

Equal Employment Opportunity Commission
1801 "L" Street, Northwest
Washington, D.C. 20507

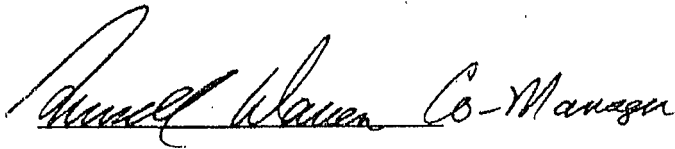

Jerome C. Rose
Regional Attorney
Jill L. Vincent
Supervisory Trial Attorney
Pamela K. Agee
Senior Trial Attorney

Equal Employment Opportunity Commission
Birmingham District Office
1900 Third Avenue, North
Birmingham, Alabama 35203-2397
Telephone: (205) 731-1299

FOR PLAINTIFF INTERVENORS: Gregory King, Earlene Millender, JoAnn Sullivan, Deloise Porter, Wallace Kyles, Tyrone Pearson, Henry Sullivan, Michael Jackson, Barbara Clarkson, Cassandra Knight, Dawn Whiting and Mark A. Vannasdall


Ross Goodman
Levin, Middlebrooks

FOR THE OUTRIGGER L.L.C.


Daniel W. Co-Manager

FOR SKILSTAF, INC.


A. Martin Wickliff
Wickliff & Hall

AFFIDAVIT OF RUSSELL WARREN

**STATE OF ALABAMA)
JEFFERSON COUNTY)**

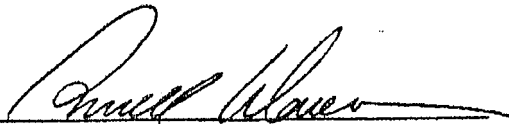
I, Affiant **Russell Warren**, being first duly sworn, and upon my oath depose and state as follows:

1. I am the majority shareholder, co-owner and co-manager of the Outrigger Restaurant, L.L.C..
2. All shares of the Outrigger L.L.C. are owned by four individuals, Laura G. Wilson, Bart Rice, W.C. Rice and myself, Warren, Russell
3. On August 25, 1999 the four shareholders of the Outrigger Restaurant L.L.C., Laura G. Wilson (who attended by telephone), Bart Rice, W.C. Rice and myself (all of whom attended in person) had a meeting in which the settlement of the lawsuit instituted by the Equal Employment Opportunity Commission against the Outrigger Restaurant L.L.C., Civil Action Number 97-1189-CB-M was discussed and the appropriate action to be taken was decided.
4. During the aforementioned meeting, in compliance with the Outrigger L.L.C.'s corporate bylaws, the four shareholders of the Outrigger L.L.C. voted on whether to settle the above referenced lawsuit with the Plaintiff and Plaintiff-Intervenors pursuant to the terms of the Consent Decree, a copy of which is attached hereto. The shareholders unanimously voted to settle the case under the terms of the Decree.

5. By unanimous agreement of the shareholders, and in compliance with the Outrigger L.L.C.'s bylaws I, Russell Warren, have been empowered to sign the above described Consent Decree on behalf of the Corporation.

6. Pursuant to that agreement and empowerment I signed the original of the Consent Decree, a copy of which is attached hereto.

Further the affiant sayeth not.


RUSSELL WARREN

Sworn and subscribed before me this 26th day of August,
1999.


NOTARY PUBLIC

My Commission Expires: 7-16-00

RELEASE

I, _____, for and in consideration of the promise by Outrigger Restaurant, L.L.C. (Outrigger) and SkilStaf, Inc. (SkilStaf) to pay to me the gross sum of _____ of which is back wages agree to the following:

I, _____, hereby release and forever discharge, Outrigger and SkilStaf their employees, agents, directors, officer, successors, associate and affiliates and each of them, from any and all claims asserted in Civil Action #CV-97-1189-CB-M and EEOC Charge Number _____.

I understand that Outrigger and SkilStaf have not admitted liability to me or to anyone else by the payment recited herein.

This document, the Mediation Agreement and the Consent Decree filed in this lawsuit recite the full and complete terms of this agreed Release given by myself, _____, to outrigger and SkilStaf.

Sworn and subscribed before me this _____ day of _____, 1999.

NOTARY PUBLIC

My Commission Expires: _____

NOTICE

AS REQUIRED UNDER THE TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED

The Outrigger Restaurant, L.L.C. (Outrigger) in settlement of Civil Action No.: CV-97-1189-CB-M agrees to the following:

1. Federal law requires that there be no discrimination against any employee or applicant for employment, because of such person's race.
2. Outrigger supports and will comply with such federal laws in all respects and will not discriminate against any employee because of the person's race.
3. Outrigger affirms that it is unlawful for an employer to discriminate against an employee by race in job assignment or in any other terms and conditions of employment. It further affirms that it is unlawful for an employer to in any manner retaliate against any individual who opposes or assists one in opposing race discrimination in any term or condition of employment.

Signed this ____ day of _____, 1999.

The Outrigger Restaurant, L.L.C.

EXHIBIT A

Mr./Ms. (Fill in the name of the individual for whom a reference has been requested) was employed at the Outrigger Restaurant from (fill in the dates of employment). During the time that he/she was employed he/she held the position(s) of (fill in the position held by the individual for whom a reference has been requested).

(Name of individual signing the letter)

EXHIBIT B